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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/700,863	11/21/2000	Philip Edwin Howse	A0-1269	2839
27127	7590	05/19/2004	EXAMINER	
HARTMAN & HARTMAN, P.C. 552 EAST 700 NORTH VALPARAISO, IN 46383			SMITH, KIMBERLY S	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/700,863

Applicant(s)

HOWSE, PHILIP EDWIN

Examiner

Kimberly S Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,7-18,20-23,25,26,28-32,35-46,50,51,53 and 56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,7-18,20-23,25,26,28-32,35-46,50,51,53 and 56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02/12/2004 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1, 3, 4, 7-18, 20-23, 25, 26, 28, 32, 35-44 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. With regards to claims 1 and 23, the specification is silent as to what properties of the particulate material enable it to be dislodged from air flowing at the surface but not across the surface. The particulate matter is subjective to turbulent airflow irrespective of the direction from which the force is created. As such, the specification has provided no defining features of the particulate material that enable it to be readily dislodged by air flowing at the surface but not dislodged by air flowing across the surface.

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4. Claims 11 and 53 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no basis within the specification that the scope of the applicant's invention included placing an electrostatically charged powder which subsequently discharges. The cited passage by the Applicant as providing support for this limitation is directed to deficiencies in prior art inventions in which "*The electrostatic charge on the powder discharges more rapidly in high humidity environments and, irrespective of climatic conditions, wind blowing through the trap tends to remove eventually the powder completely therefrom. Accordingly it is a further object of the invention...*". If this passage were cited to show support for the applicant's invention and currently claimed limitation, it would also provide support for the wind blowing through the trap removes the powder completely therefrom, which is contrary to what the applicant has previously claimed.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1, 3, 4, 7-18, 20-23, 25, 26, 28-32, 35-46, 50, 51, 53 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. With regards to claim 10, it is unclear as to how the particulate material is not electrostatically charged when first rendered airborne by the pest? It has been maintained throughout the specification that a charge may be imparted on the material as it is rendered

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airborne from the particulate material-bearing surface. If the charge is not present when first rendered airborne, when does the electrostatic charge occur?

8. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear as to how the particulate material deposited as electrostatically charged powder becomes discharged when placed on an electrically insulating material? Further it is unclear as to how a claim 11 may depend from claim 10 as there is no definitive way to determine that a once charged powder is completely discharged as claim 10 requires a non-electrostatically charged particle.

9. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is questioned as to how something may be "*further* eliminated". If previously eliminated, how is it possible to *further* eliminate something?

10. The term "readily dislodged" in claims 1, 12, 23, 36, 45, 51 is a relative term which renders the claim indefinite. The term "readily" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The specification states that during the experimental test case that with the use of the recess and raised edges along the periphery, loss of the powder via wind (i.e. transverse air flow) was seen. As such, one is not capable of determining what the Applicant's definition of "readily" is to include. Further, as the claims are directed to include limitations encompassing both non-charged and charged

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particulate material, is the same amount of force required to “readily” dislodge the charged and non-charged particles?

11. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear at line 10 as to what is meant by the “material being sufficiently readily dislodged”?

12. Regarding claim 53, it is unclear as to how a claim limiting the particulate material being deposited in the recess as an electrostatically-charged fine powder can depend from a claim (i.e. 51) which requires that the particulate material is not electrostatically charged while within the recess?

Response to Amendment

13. The Declaration under 37 CFR 1.132 filed 04/28/2004 is insufficient to overcome the rejection of claims 1, 3, 4, 7-18, 20-23, 25, 26, 28-32, 35-46, 50, 51, 53 and 56 based upon the rejections anticipated or made obvious by Howse as set forth in the last Office action because: with regards to paragraph (7) of the declaration where it is stated that “*the intended meaning was that during the process of bringing the trap to an operating condition...*” The phrase meaning “bringing the trap to an operating condition” inherently refers to a step that takes place prior to the apparatus being operational. As such, this does not effectively dissuade one having skill in the art from interpreting the Howse reference to encompass the “Frictional charging of the particles in the case of traps may take place...during operation”. Regarding paragraph (8) of the declaration, it is noted that the thickness of the layer present within the instant invention was not

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specified nor that the thickness of the powder was instrumental or critical in the operation of the invention.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Howse (US 6,327,810), Miller (US 2,255,360).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S Smith whose telephone number is 703-308-8515. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T Jordan can be reached on 703-306-4159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

kss

Charles T. Jordan
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